

**Notice of Allowability**

Application No.

08/898,736

Examiner

Sarah L. Kuhns

Applicant(s)

COPPENS ET AL.

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Appeal Brief filed 7/21/04.
2. ☒ The allowed claim(s) is/are 1-83.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All    b) ☐ Some\*    c) ☐ None    of the:
  1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

### **EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Timothy Levstik on February 15, 2006.

The application has been amended as follows:

In the abstract:

Line 7, the last word is "the"

Line 10, the last word is "of"

In the specification:

Page 1, paragraph 2, line 2, last word is "have"

Page 1, paragraph 4, line 5, should read "environmental factors, such as agricultural practice, influence the quality of the"

Page 3, last line, should read "malt out of corn"

Page 4, line 3, the "-" before glucan should be deleted

Page 4, paragraph 6, line 2, the last word is "the"

Page 4, paragraph 6, line 6, should read "enhanced enzymatic activity of at least one enzyme, such as  $\beta$ -glucanase"

Page 4, last line, "and/ r" should be "and/or"

Page 5, second paragraph, 4<sup>th</sup> word is "another"

Page 5, second paragraph, 2<sup>nd</sup> line from the bottom should state, "spores are held together until the cereal..."

Page 6, 3<sup>rd</sup> line from the bottom, 5<sup>th</sup> word is "delbrueckii"

Page 8, bottom line should state, "gracile, Geotrichum heritum, Geotrichum klebaknii, Geotrichum penicillatum"

Page 9, 3<sup>rd</sup> line from the bottom, 2<sup>nd</sup> word is "Venturia," 5<sup>th</sup> word is "is"

Page 11, 3<sup>rd</sup> line from the bottom, 4<sup>th</sup> word is "enzyme," 8<sup>th</sup> word is "The"

Page 11, last line should state, "...defined conditions..."

Page 12, 1<sup>st</sup> line of (b), 2<sup>nd</sup> word is "of"

Page 12, 2<sup>nd</sup> line of (b), "and/ r" should be "and/or"

Page 12, last line, 2<sup>nd</sup> word is "or" and last word is "elements"

Page 13, 2<sup>nd</sup> line from the bottom, should be "sprayed on" and "during the steep"

Page 14, last line should say "example 3"

Page 15, last line should state, "washed once with sterile..."

Page 16, 2<sup>nd</sup> line from the bottom, 3<sup>rd</sup> word is "only"

Page 16, last line, 2<sup>nd</sup> word is "the"

Page 18, 2<sup>nd</sup> line from the bottom, last word is "homogeneity"

Page 23, last line, 3<sup>rd</sup> word is "relative"

Page 28, line 6 should end with "non-"

Page 30, 2<sup>nd</sup> line, last word in "conventional"

Page 34, 2<sup>nd</sup> bullet under S45, 2<sup>nd</sup> line, last word is "saline"

Page 38, 2<sup>nd</sup> line ends with "saline"

Page 38, last line should state, "steeping was carried out by immersion using the following scheme:"

Page 39, 1<sup>st</sup> line under Addition of the Microbial Cultures, last word is "were"

Page 42, last line, 3<sup>rd</sup> word is "the" and 9<sup>th</sup> word is "stage"

In the claims:

Claim 6, line 1, "claims" is changed to "claim"

Claim 9, line 2, "comprising" is changed to "consisting"

Claim 22, line 1, "claims" is changed to "claim"

Claim 24, line 2, "comprising" is changed to "consisting"

Claim 28, line 2, "comprising" is changed to "consisting"

Claim 30, line 2, "comprising" is changed to "consisting"

Claim 51, line 1, "claims" is changed to "claim"

Claim 54, line 1, "claims" is changed to "claim"

Claim 59, line 1, "claims" is changed to "claim"

### ***Reasons for Allowance***

The following is an examiner's statement of reasons for allowance: Applicant's arguments have been fully considered and are persuasive. Applicant has provided data in the form of declarations demonstrating the advantages associated with the use of activated spores, as opposed to no spores or dormant spores, as well as that the spores of Gyllang are not activated. Additionally, as Applicant points out in the

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response, there is nothing in Gyllang suggesting that activated spores be added to malt to achieve a desirable effect. Rather, Gyllang was directed to a study that focused on whether the addition of dormant spores had an adverse effect on the resulting beer. As such, the claimed invention is patentable over Gyllang, which was deemed to be the closest prior art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

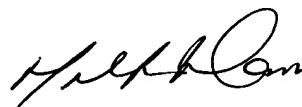
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah L. Kuhns whose telephone number is 571-272-1088. The examiner can normally be reached on Monday-Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached at 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SLK



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